Endangered Species Act Update: Section 7 Consultations and Next Steps
May 20-21, 2020 Pesticide Program Dialogue Committee Meeting

Interagency Collaboration Formalized in Farm Bill:

- The December 2018 Farm Bill formalized an Interagency Working Group (IWG) comprised of leadership from EPA, Department of the Interior (DOI), Department of Commerce (DOC), U.S. Department of Agriculture (USDA), and the Center for Environmental Quality (CEQ). The working group is charged with reviewing statutory requirements, regulations and case law and making recommendations to improve scientific and policy approaches to pesticide consultation. The Farm Bill tasked EPA with leadership responsibilities of the IWG.
- As part of the efforts to improve the pesticide consultation process, EPA developed and released the Revised Method for Conducting National Level Listed Species Biological Evaluations of Conventional Pesticides (referred to as the Revised Method) in March 2020. Before the Revised Method was finalized, EPA incorporated input from a public comment period, formally consulted with federally recognized Tribes, and collaborated with Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), together "the Services", and USDA. The Revised Method incorporates actual pesticide usage data into the Biological Evaluations (BEs) for the first time, using reliable and robust data sources that EPA has relied on for 20 years to support human health risk assessments and certain risk management decisions. The method also incorporates a probabilistic approach, a weight of evidence framework, and characterization of the strength of the evidence for Likely to Adversely Affect ("LAA') determinations. Strength of evidence is based on factors such as confidence in spatial data (including species ranges and footprint of a use pattern), confidence in usage data, and confidence in toxicity data.

- The Revised Method was used to conduct draft BEs for methomyl and carbaryl, which were also released in March 2020. The public comment period for these two BEs is open through July 2, 2020 (a 45-day extension was recently granted based on several requests for extensions). Public comments may be submitted at www.regulations.gov in docket EPA-HQ-OPP-2020-0090. The Revised Method, methomyl and carbaryl draft BEs, and the Report to Congress on Improving Consultation Process Under Endangered Species Act Section 7 for Pesticide Registration and Registration Review can be found at: https://www.epa.gov/endangered-species.

- Also pursuant to the 2018 Farm Bill, EPA continues to increase opportunities for meaningful stakeholder feedback on the working group's activities. Stakeholder feedback is a vital part of sound regulations, and the agencies are committed to continued outreach to stakeholders. EPA and the Services have actively sought stakeholder feedback on a number of key activities. For example, EPA hosted an Environmental Modeling Public Meeting (EMPM) in October 2019 on "Incorporation of Pesticide Usage Data into Environmental Exposure and Ecological Risk Assessments." Presenters included federal and state regulatory agencies, mosquito control authorities, and technical consultants. Topics of the presentations and associated discussions included how to incorporate usage data into listed species assessments and descriptions of available usage data and their utility in ecological risk assessments. The EMPM provided a forum for stakeholders to present scientific and technical feedback on this important data source in ecological risk assessment methodology.

  In March 2020, EPA solicited public comment on the draft methomyl and carbaryl BEs, which were conducted using the Revised Method for national-level listed species BEs for conventional pesticides. In April 2020, EPA hosted a public webinar to present the draft BEs for carbaryl and

methomyl and answer questions from the public, with the goal of improving the overall quality of comments from stakeholders during the public comment period. After considering comments received during the public comment period, EPA is planning to issue the final BEs in early 2021 along with a response to the public comment document. EPA will continue to thoroughly consider feedback received through public comment periods, stakeholder input, and additional interagency discussion before finalizing these BEs and initiating consultation with the Services.

Biological Evaluation Schedule

- The schedule for upcoming nationwide BEs is in the following table. The schedule for conducting most of these BEs was negotiated as part of a partial settlement agreement pursuant to a joint stipulation filed on October 18, 2019, and entered by the court on October 22, 2019, in Center for Biological Diversity et al. v. EPA et al. Note that both draft and final BE dates are included. Draft BE dates are milestones, and final BEs are scheduled to be completed approximately 1 year after the drafts are completed. Final BE dates are to be completed at a date certain under the partial settlement agreement. The time between draft and final BEs allows for a public comment period to be held and sufficient time to incorporate public comments.

Current Schedule for Upcoming Draft and Final Biological Evaluations		
Pesticide	**Draft BE Date**	**Final BE Date**
Methomyl[a], Carbaryl[a]	March 2020	March 2021
Atrazine[a], Simazine[a], Propazine, Glyphosate	September 2020	September 2021
Clothianidin, Thiamethoxam	June 2021	June 2022
Brodifacoum[a], Bromadiolone[a], Warfarin[a], Zinc phosphide[a]	September 2023	September 2024
a. Included in the Center for Biological Diversity et al. v. EPA et al. partial settlement agreement		

Ongoing Consultations for Chlorpyrifos, Diazinon, and Malathion:

- On July 19, 2019, EPA re-initiated formal consultation with NMFS on their December 2017 Biological Opinion (BiOp) on chlorpyrifos, diazinon, and malathion. EPA re-initiated consultation because additional information became available (*e.g.*, public comments on the BiOp and additional usage information) that may have revealed that the extent of the effects of the action (*i.e.*, registration review) may be different than what was previously considered. EPA also provided additional usage data it believes may be relevant to the consultation. In its transmittal of this information to NMFS, EPA also referenced usage data and information that had been recently submitted by the registrants of pesticide products containing chlorpyrifos, malathion, and diazinon. Based on review of information EPA provided, NMFS determined that it is appropriate to revise the chlorpyrifos, malathion, and diazinon BiOp. Based on the need to meet other court-ordered deadlines, NMFS will issue revised BiOps for chlorpyrifos, diazinon, and malathion by June 2022.

- In addition, FWS, EPA, and the applicant for malathion agreed to extend the consultation timeline to allow for incorporation of usage data into the process into the malathion consultation. FWS is scheduled to issue its final malathion BiOp in March 2021.

Additional Work that Benefits Listed Species:

- EPA continues to implement a three-pronged strategy that is intended to protect threatened and endangered species and designated critical habitat by focusing resources on areas where we can achieve the most protections as described in the December 2019 report to Congress.[1] For new uses on pesticide tolerant crops, EPA is using methods set out in the Overview Document for endangered species assessments to make effects determinations. The Overview Document details EPA's general risk assessment approach for pesticides and its specific application to endangered species. This approach is being used to address EPA's FIFRA and ESA obligations while EPA continues to develop and implement methodologies to assess the potential risks of pesticides to listed species and their designated critical habitat through the interagency pilot process. In addition, through the assessment processes supporting registration and registration review activities, EPA makes No Effect findings where appropriate for conventional, biochemical, and antimicrobial pesticides when EPA determines there are no effects at the taxa level. We also continue to compare potential hazards of new pesticides to the registered alternatives to allow stakeholders to compare the relative risks of the proposed registration to available alternatives, which often have the potential to pose greater risks to ESA-listed species than do the newer, generally lower-risk pesticides being introduced into the marketplace today.

[1] https://www.epa.gov/endangered-species/report-congress-improving-consultation-process-under-endangered-species-act